APPENDIX

(Documents are in Chronological Order)

		Page
Exhibit A.	Complaint to D.C. Board on Professional Responsibility, August 15, 1978, with enclosed letter of September 27, 1976 ...	1a
Exhibit B.	Motion to Set Aside Jury Verdict for Fraud Upon the Court, February 19, 1981 (Affidavit and exhibits are not included because of their length.)	7a
Exhibit C.	Appellant's Reply Brief, December 31, 1981	9a
Exhibit D.	Memorandum Opinion and Judgment, D.C. Court of Appeals, April 8, 1982, and Commentary by Petitioner	15a
Exhibit E.	Motion for a Ruling on the Issue Presented for Review, April 19, 1982 (Supporting memorandum is not included because it covers the same ground that is covered elsewhere in this petition.) ...	29a
Exhibit F.	Order, D.C. Court of Appeals, May 5, 1982	31a

Exhibit A

2001 16th Street, NW (Apt 504)
Washington, D.C. 20009
(202-462-7145)

August 15, 1978

Fred Grabowsky, Esquire
Bar Counsel
The Disciplinary Board
The District of Columbia Bar
Suite 840
1426 H Street, N.W.
Washington, D.C. 20005

Dear Mr. Grabowsky:

Your name was given me by Mr. James Bradner of the Center for Professional Discipline of the American Bar Association in Chicago.

I should like to make a complaint of unethical conduct on the part of five attorneys. I am *assuming* it is unethical for lawyers to represent false documents as being genuine in order to support false testimony against a plaintiff in a lawsuit.

The suit was *Rice* v. *Nardini and the Psychiatric Institute*, CA 703-74. The issue was loss of memory due to electric shock treatment. The case was of historic interest in the psychiatric profession in that it was the first time in 40 years of such complaints that one had been litigated. I was the plaintiff.

The false documents concerning me were:

(1) The hospital records of Dr. Peter S. Mendelis, who was my psychiatrist at the hospital (retroactively forged in large part).

(2) The private office records of Dr. Peter S. Mendelis for the period of time I was seeing him after I left the hospital (retroactively forged in their entirety).

(3) An enormously padded Blue Shield billing showing services that did not take place (my whole bill for two months was compressed into half a month).

(4) A fake dental X-ray showing nice looking front teeth when I had no front teeth.

I should explain that this last strange-sounding item was quite important in the case. It was the mutilation of my mouth by an orthodontist, Dr. James P. Kerrigan, that had led to my hospitalization for depression. The attorneys contended that Dr. Kerrigan had done me no harm and that I was, instead, depressed because I was an insane woman. The point of the fake X-ray was to make it appear that Dr. Kerrigan had done me great good. That "proved" my insanity; and my insanity was supposed to have caused me to lose my memory (or imagine I lost it).

The attorneys concerned were: *James C. Greeg*, *Peter R. Sherman*, *Raymond A. Yost*, *Philip G. Sunderland*, and *Bruce J. Terris*.

The three first listed were attorneys for the defense. Their motivation was at least clear. I had heard that, in a malpractice suit, the weaker the defense's position is on medical grounds, the more vigorous is the attack on the plaintiff. Viewed in that light, this mountain of fiction which the defense had prepared was flattering, and proved the justice of my complaint.

The two last listed were theoretically on my side. Their motivation in supporting all the false documents, and the defense's charge that I was insane, is not at all clear. There had never been any question of the spurious character of the forgeries. I enclose a letter I wrote to Philip Sunderland when I first saw the hospital records, at which time I supposed of course they would be challenged. The private office records were even worse forgeries, with the time frame so muddled that every reference to a recognizable event appeared at an earlier time than the event happened. Yet Mr. Sunderland proceeded to send these forgeries to the expert witnesses, representing them as real, plus also his psychiatric opinion that my depression was of the endogenous (insane and without reason) type. The Blue Shield form and the dental X-ray I had not myself seen prior to the trial; I don't know whether my

attorneys had or not. However, when the dental X-ray was shown, creating quite a sensation in the courtroom, I wanted Mr. Terris to show photographs of what I actually looked like before and after Dr. Kerrigan's ministrations, but he wouldn't do it. He said if I tried to say anything he would put me out of the courtroom.

Mr. Terris and Mr. Sunderland have subsequently refused to give any reason for treating all these false documents as genuine, or to guide my husband and me in taking whatever action should be taken when a trial is conducted wholly on false evidence. We believe that, at the very least, all five of these attorneys should be subject to some kind of disciplinary action. There may, however, be other action that should be taken, and we would appreciate your opinion. We can, of course, provide considerably more detail on the matters outlined here.

Sincerely,

/s/ Marilyn Rice
MARILYN RICE

Enclosure

cc:
James C. Gregg, Esq.
Peter R. Sherman, Esq.
Raymond A. Yost, Esq.
Philip G. Sunderland, Esq.
Bruce J. Terris, Esq.
Dr. John E. Nardini
Psychiatric Institute of Washington
Dr. Peter S. Mendelis
Dr. James P. Kerrigan
National Committee on Patients Rights
Coalition Against Forced Treatment
Citizens Commission on Human Rights
Quebec Patients Rights Association
Patients Rights Center, Inc.

U.S. Civil Service Commission
Womens Legal Defense Fund
Council for Public Interest Law
Mental Health Law Project
American Bar Association
American Civil Liberties Union
National Institute of Mental Health
National Commission on Health Records
Health Care Finance Administration
D.C. Department of Human Resources
Amer Bd of Psychiatry and Neurology
American Dental Association
University of Pittsburgh Dental School
U.S. District Attorney
Judge Leonard Braman
Committee on the Judiciary

2001 16th Street, NW (Apt 504)
Washington, D.C. 20009

September 27, 1976

Mr. Philip Sunderland
1908 Sunderland Place, NW
Washington, D.C. 20036

Dear Phil,

Thanks for sending the hospital records. They are fascinating. Dr. Nardini's records are authentic and the nurses' notes are authentic but the only paper of Mendelis's that is authentic is the "History" which is dated February 20, 1973.

Mendelis's "Progress Notes," which begin on February 14, 1973, are pure fiction, composed long after the fact. Not only are the important matters totally at variance with history, but he didn't even get the little easily checkable details right in his composition. For instance, he has me getting my first electric shock on the wrong day and being discharged from the hospital on the wrong day.

When his notes are lined up with the nurses' notes of the same days, they are very funny. See attached excerpts.

As for the scurrilous document that purports to have been written on May 25, 1973, I think it was actually written very recently. Note that it begins by describing me as a 53-year old woman. That is my *present* age. I think he must have subtracted my birth date, 1923, from 1976.

Do you want to tell Raymond Yost that these fictional hospital records are not acceptable and he must fork over the original log?

Or do you want me to go after Mendelis on my own?

Or do you want to tear him to pieces in the court room and send him off to jail for perjury—after which we can get on with the interesting part of the case concerning brains and memory?

Anyway, my inclination is to handle Mendelis in the severest possible way, whatever that may be. When I left him out of this case because I felt sorry for him, I didn't expect him to turn around and be the hatchet man for the other side.

I have typed up most of the handwritten material in the hospital file and will give it to you the next time I am over.

Marilyn
/s/ MARILYN RICE

Exhibit B

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Civil Action No. 703-74
Civil I — Judge Braman

MARILYN RICE,

Plaintiff

v.

DR. JOHN E. NARDINI & PSYCHIATRIC INSTITUTE,

Defendants

FILED February 19, 1981

MOTION TO SET ASIDE JURY VERDICT FOR FRAUD UPON THE COURT

MARILYN RICE, plaintiff in *Marilyn Rice* v. *Dr. John E. Nardini and the Psychiatric Institute of Washington, CA 703-74*, a proceeding concerning medical malpractice which was tried from December 15, 1976 through January 7, 1977, moves the Court, pursuant to Rule 60(b)(6), to set aside the verdict for defendant Nardini in said proceeding for *fraud upon the court.*

Plaintiff asks this action, constituting declaration of a mistrial, in recognition that *virtually all of the medical and dental records concerning herself* which were read or displayed at trial, being represented by defense counsel and plaintiff's counsel as bona fide, true, and valid documents, were *forged or otherwise false.*

Attached is an affidavit in support of this motion, including exhibits, and a proposed order.

The directed verdict for defendant Psychiatric Institute is not contested.

/s/ Marilyn Rice

MARILYN RICE (pro se)
2106 S. 5th Street (Apt 1)
Arlington, Va. 22204
(703-979-5398)

POINTS AND AUTHORITIES

1. Rule 60(b)(6), Superior Court Rules of Civil Procedure.

/s/ Marilyn Rice

MARILYN RICE (pro se)

Note: Affidavit and exhibits are not included here because of their length.

Exhibit C

DISTRICT OF COLUMBIA COURT OF APPEALS

FILED Dec 31, 1981

REPLY BRIEF OF APPELLANT, MARILYN RICE
Appeal No. 81-996

TABLE OF CONTENTS

Page

Appellant's Position 1
Appellees' Position 2
The Court's Position 4

Appellant's Position

The issue presented for appellate review arose at a hearing on May 21, 1981, devoted to discussion of plaintiff Rice's *Motion to Set Aside Jury Verdict for FRAUD UPON THE COURT*. At this hearing Judge Leonard Braman pointed to the case of Hazel-Atlas Glass Company vs. Hartford-Empire Company, 322 US 238, 1944, as governing procedure for dealing with fraud upon the court (page 9 of transcript), and noted that this case reached back nine years to set aside a judgment (page 10). He constantly assumed, however, that the doctrine of Hazel-Atlas calls for charges to be brought in the form of an independent action (pages 10, 12, 13, 14) and he denied plaintiff's motion in the following words (page 16):

> ". . . I can appreciate your eagerness to get to the substance of the question, but the antecedent question is whether this is a proper forum for establishing the character of the documents and whether this Court has any power to do anything about it.
>
> ". . . the question before this court is whether the Court has the power under the motion procedure which you have

elected to follow, whether the Court has the power to touch the 1977 judgment.

". . . There may be judicial power to touch it under an independent action of the Hazel-Atlas variety. . . . I will deny [the motion] without prejudice to the filing of an independent action."

". . . you have the right to appeal my ruling. . . ."

Plaintiff then researched this Hazel-Atlas case and found that there literally was no such thing as "an independent action of the Hazel-Atlas variety." On the contrary, this case had settled a preceding controversy over the applicability of an ancillary vs. independent action for examining fraud charges, and had settled it in favor of *an ancillary proceeding*, at least where fraud of such dimensions as to be designated "fraud upon the court" was concerned.

Unfortunately, by the time plaintiff had discovered this honest error in Judge Braman's recollection, he had retired and could not correct it.

She therefore did appeal, and in her *Brief of Appellant*, filed November 17, 1981, presented the following simple either-or issue for review: "WHETHER THE DOCTRINE OF HAZEL-ATLAS, DEALING WITH FRAUD UPON THE COURT, CALLS FOR A MOTION PROCEDURE OR AN INDEPENDENT ACTION." The answer was so clearcut for anyone who chose to look it up that there was no room for argument in the ordinary sense of the word. Plaintiff nevertheless, to clarify the whole context of the issue, presented under the caption of Argument a distillation of information from MOORE'S FEDERAL PRACTICE on the fraud provisions of Rule 60(b) and the doctrine of Hazel-Atlas, explaining how it came to be that the latter contemplates a post-trial motion as the vehicle of placing before a court a charge of "fraud upon the court."

It would seem that this procedural point could now be settled, and the case go back to the lower court for substantive action.

Appellees' Position

Appellees' counsel have never taken a position on the procedural issue on appeal, which originated between Judge Braman and plaintiff. Unless they now wished to contend that the Hazel-Atlas doctrine calls for an independent action, there was no necessity for their submitting a brief. The matter could have been kept as simple as it actually is. Since they did submit a brief, *and one which does not even make passing reference to the issue on appeal*, the purpose of the submission bears discussion.

Relations among the parties

That purpose can be understood only in the light of a clear understanding of the unusual relations among the parties.

On one side is Marilyn Rice, plaintiff in the original proceeding of *Rice* v. *Nardini et al.* On the other side are defendants and their counsel plus also, in the role of third parties, plaintiff's counsel in the original proceeding. In this post-trial action, plaintiff has accused all five attorneys in the case (the two who were formerly ostensibly on her side and the three on the other) of perpetrating a fraud upon the court, consisting of carrying on a mock trial for three weeks with "medical records" forged on the eve of the trial and assorted other spurious documents and displays.

There are then two kinds of adversary relationships. In the background is Marilyn Rice v. Dr. Nardini et al. In the foreground is Marilyn Rice v. defense counsel Gregg, Sherman, and Yost and plaintiff's former counsel Terris and Sunderland. The documents which are at present being exchanged refer to the foreground relationship, wherein plaintiff has accused all the attorneys of fraud upon the court.

The apportionment of responsibility among them was as follows. The fraudulent exhibits were manufactured on the defendants' side of the case, and defendants' attorneys produced most of them before the trial. Such an act of desperation could not have won them the case, however. It amounted to an

admission that they could make no honest defense, and would have handed the case to plaintiff "on a silver platter" if her own attorneys had exposed it. But plaintiff's attorneys, rather than rising to this opportunity, concealed defendants' attempted fraud and brought it to successful fruition for reasons of their own. Thus it was plaintiff's attorneys who played the crucial role in the fraud upon the court.

Of course, the official gainers by the fraud were the defendants, and so it is that Mr. Gregg, chief counsel for the defendants, now finds himself in the role of defender of himself and the other four attorneys. (To further complicate the attorney relations, an additional name James F. Bromley appears as "Attorney for Appellee, John E. Nardini" on the brief submitted by Mr. Gregg. This man has not entered an appearance in the case, and what authority or responsibility he may hold is unknown to plaintiff.)

In summary, Mr. Gregg is attempting to defend himself and the other attorneys in the *Brief for Appellee, John E. Nardini*, mailed December 21, 1981. He has no interest in which fraud-charging procedure may be correct under Hazel-Atlas, but simply seeks to kill the action, i.e. prevent plaintiff's fraud charges from being investigated.

Appellees' brief

The brief itself totally ignores the issue plaintiff is appealing, as mentioned above, but presents one or two (depending on how they are counted) other issues which apparently Mr. Gregg is asking the appeals court to substitute for plaintiff's issue. Clearly such substitution is out of order. Nevertheless, plaintiff will comment on these "issues presented for review."

The first is: *"Whether a motion to set aside a verdict filed four years after the verdict was rendered was timely filed."* This is indeterminate. The answer would depend on the ground for the motion and the reason for the delay.

The second issue rewords the first. Instead of asking whether the motion was timely filed, it asks whether an

untimely motion is properly denied (asserting as a premise that plaintiff's counsel conducted an adversary-type procedure).

There follows an independent "argument," unrelated to anything in appellant's brief, and culminating in citation of two cases chiefly relied upon to prove that plaintiff's *Motion to Set Aside Jury Verdict for Fraud Upon the Court* was not timely filed. Upon referring to these, plaintiff found to her amusement that neither has anything to do with a jury verdict and neither has anything to do with fraud of any kind, let alone "fraud upon the court." They seem to have been cited to prove that this is a legal document.

The issue Mr. Gregg is actually presenting is whether the Appeals Court will help him block investigation of the alleged fraud on the part of the five attorneys.

The Court's Position

Plaintiff has made very serious charges against five Washington attorneys. Attorneys and judges are part of the same professional community and there is a natural tendency in all such communities for members to be protective of their fellows. It is only realistic for plaintiff to recognize this.

Additionally, plaintiff has already had experience with the legal profession's zeal to police itself. Before she launched her Motion, she made a complaint to the Board on Professional Responsibility of the D.C. Bar about the five lawyers concerned. The Board's action consisted in secret consultation with the accused parties followed by a nonsensically worded brush-off.

Inasmuch as the Board on Professional Responsibility is organizationally a part of the D.C. Court of Appeals, this prior action raises another question: whether the Court would have an interest in supporting the Board's prior action.

Plaintiff would be grateful if the Judges of the Court, in their own persons, would consciously consider this question among themselves.

Respectfully submitted,

/s/ Marilyn Rice

MARILYN RICE, Pro Se
2106 S. 5th Street (Apt 1)
Arlington, Va. 22204
(979-5398)

Exhibit D

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 81-996

MARILYN RICE,

Appellant,

v.

JOHN E. NARDINI, *et al.*,

Appellees.

Appeal From The Superior Court
Of The District Of Columbia
Civil Division

CA 703-74

(Hon. Leonard Braman, Trial Judge)

(Argued March 31, 1982 Decided April 8, 1982)

BEFORE: Mack and Pryor, Associate Judges, and Pair, Associate Judge, Retired

FILED Apr 08 1982

MEMORANDUM OPINION AND JUDGMENT

This appeal is from the denial of a Super. Ct. Civ. R. 60(b)(6) motion for relief from a judgment entered four years earlier. Finding no reversible error, we affirm.

In 1977, appellant filed suit against appellee, Dr. John E. Nardini alleging medical malpractice involving treatments received by her while a patient of appellee at the Psychiatric Institute. [1] Appellant's specific complaint was that she was

[1] Appellant's original complaint named the Psychiatric Institute as a codefendant. During the trial, a motion for a directed verdict was granted, thereby dismissing Psychiatric Institute from the suit.

administered electric shock treatments without being fully informed of possible adverse effects. On January 7, 1977, a jury returned a verdict for appellee upon which judgment was entered. More than four years later, appellant filed in February 1981, a motion to set aside the judgment for fraud upon the court, claiming that six of the medical records introduced into evidence at the 1977 trial were fraudulent. According to appellant, this fraud was perpetrated by appellee with the knowledge and cooperation of appellant's trial counsel. Appellant sought relief pursuant to Super. Ct. Civ. R. 60(b)(6). [2]

Clause (6) of Rule 60(b) permits the court to relieve a party from final judgment for "any other reason justifying relief" providing only that the motion be filed within a "reasonable time." Clause (3), which specifically redresses fraud, also requires filing within a "reasonable time," but under no circumstances later than one year after the judgment complained of is entered. Appellee contends that although the motion cites 60(b)(6) as a basis for relief, appellant's complaint was of fraud coming within 60(b)(3). We agree.

To justify relief under Super. Ct. Civ. R. 60(b)(6), there must be some compelling reason not covered by the other clauses of the rule. *Day* v. *United Securities Company*, D.C. App., 272 A.2d 448, 451 (1970). Here, appellant's claim involved the type of fraud encompassed by Clause (3) and should have been filed within the one-year period prescribed. Clearly, Clause (6) was not intended to relieve a litigant from the time requirement of Clause (3). *See Harris* v. *Harris*, D.C. App., 304 A.2d 635, 636 (1973). Moreover, appellant knew of the alleged fraud in 1977, but waited four years before seeking

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[2] In relevant part, Rule 60(b) provides:

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: . . . (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; . . . (6) any other reason justifying relief from the operation of the judgment.

relief. Rule 60(b) is not intended to be a substitute for an appeal that has been foregone. *Leeks* v. *Leeks*, D.C. App., 316 A.2d 859, 860 (1974). In such a case, possible prejudice to the non-moving party militates strongly in favor of finality.

Since the motion was not filed within the time prescribed by Clause (3), the trial court properly denied appellant the relief sought. Accordingly, it is

ORDERED and ADJUDGED that the judgment of the trial court be, and hereby is, affirmed.

FOR THE COURT:

/s/ Alan I. Herman
ALAN I. HERMAN,
Clerk of the Court.

Copies to:

Honorable Leonard Braman

Clerk, Superior Court

Ms. Marilyn Rice
2106 S. 5th Street
Apt. 1
Arlington, Virginia 22204

James C. Gregg, Esquire
James F. Bromley
Macleay, Lynch, Bernarhard, Gregg & Attridge
1625 K Street, N.W.
Washington, D.C. 20006

COMMENTARY BY PETITIONER

Traditionally, a litigant appeals a lower court judgment on grounds of error in the application of law, and an appeals court considers the specific question(s) raised when it affirms, reverses, or takes other action with regard to the lower court judgment. Here, however, though a traditional appeal was made, the Court affirmed a lower court judgment on grounds invented by itself, positing a bizarre construction of court rules, and all the while pretending that it was but carrying out its normal appellate function.

How could such a decision have been issued?

The answer is that this is a *memorandum* opinion and judgment, which means that it would not ordinarily be seen by anyone other than the parties. (Robert L. Stern: APPELLATE PRACTICE IN THE UNITED STATES, 1981, Chapter 10, pages 486-490.) The perpetrators and beneficiaries of the fraud could be expected to be content, the *pro se* protester of the fraud to be helpless, and no one else ever to be the wiser.

Petitioner does not question the right of a state court system to interpret its own rules, but she does challenge its right to make *sub rosa* interpretations which apply to one case only. If this document were to stand, it should be published and discussed, for it amounts to a statement that complaints of attorney fraud, no matter how extreme, are not permitted to be made in the District of Columbia court system after one year.

What the document does say is by no means apparent from its surface. It has to be examined in conjunction with the facts it suppresses or distorts; in conjunction with the normal interpretation of Federal Rule 60(b) (with which published interpretations of D.C. Rule 60(b) appear to coincide); and in conjunction with the dicta in the cited cases.

Petitioner now proceeds with such an analysis.

First to be noted, because of first importance, is *what isn't there*. Three stout negative pretenses—not premises, but

pretenses—are firmly gripped throughout the memorandum, but never stated. They are:

(1) That there is no such special category of fraud as "fraud upon the court."

(2) That petitioner did not file a motion to have a judgment set aside for "fraud upon the court."

(3) That petitioner did not submit for appellate review a procedural question concerning "fraud upon the court."

By such disingenuous device, the judges dispose of the appeal—i.e. by nonrecognition that there ever was such an appeal.

The visible content of the memorandum becomes, then, a sort of front document, wherein the Court pettifogs to the conclusion that petitioner's charges in the lower court must be quashed. Let us look at this specious front document chunk by chunk, seriatim. Quotes are in italics, comments follow

FIRST PARAGRAPH

1. *This appeal is from denial of a Super. Ct. Civ. R. 60(b)(6) motion for relief from a judgment entered four years earlier.*

This sentence should read: "This appeal is from denial of a Super. Ct. Civ. R. 60(b) motion for relief from a judgment for fraud upon the court. The judgment was entered four years earlier."

Please refer to the motion itself, included herewith as Exhibit B, and note the title and content of the motion.

Petitioner actually sought relief pursuant to the passage in Rule 60(b) which reads: "This rule does not limit the power of a court . . . to set aside a judgment for fraud upon the court." The very title of the motion was taken from this passage, i.e., "Motion *to set aside* jury verdict *for fraud upon the court.*" That petitioner was charging the species of fraud called "fraud upon the court" was totally clear to the D.C. Court of Appeals

not only from the motion itself but from numerous subsequent pleadings and especially her 21-page Appellant's Brief. This latter constituted a dissertation on the fraud provisions of Rule 60(b) with special reference to "fraud upon the court."

The citation of clause 6 in the motion was owed petitioner's literal reading and interpretation of the Rule. The Rule's six numbered clauses cover all logically possible grounds for relief from a judgment and she assumed that the pertinent grounds clause should be cited, even though she alleged the *degree* of fraud represented by the phrase "fraud upon the court." Clause 3, in which the word fraud appears, refers only to adversary fraud, and therefore the residual clause 6, "any other reason," would comprehend the unusual fraud situation of which she complained.

In common sense terms, fraud by an adverse party and/or his counsel is one thing; fraud in which one's own counsel joins is something else. The distinction goes to the distinction between an adversary proceeding and a lynching party. This was petitioner's reasoning in selecting clause 6.

At a later time, she learned from MOORE'S FEDERAL PRACTICE that this categorization of the fraud situation by grounds clause had been correct. (See Vol. 7, pages 290-92, 342-43, 368 (notes), 375, 404.) Also, the mention of a numbered clause does not detract from an allegation of "fraud upon the court," for the power of a court to set aside a judgment for fraud upon it is an additional or cumulative power. (Ibid., page 290.) The mention of clause 6 was, however, a non-necessity. According to the same treatise, page 346: "In many situations exact categorization [by clause of Rule 60(b)] is very difficult and, in the main, should be avoided except where the category is obvious or where exact choice is necessary to decision."

But the D.C. Court of Appeals has seized upon the mention of clause 6 to pretend that petitioner did not move for relief due to the grave and serious phenomenon of "fraud upon the court" but cited a numbered clause without more. This is untrue.

2. *Finding no reversible error, we affirm [the denial].*

The error appealed was the lower court's ruling that an allegation of "fraud upon the court" requires an independent action rather than a post-trial motion, citing as authority *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U.S. 238 (1944).

The court denied the motion "without prejudice to filing of an independent action"; referred petitioner to the doctrine of *Hazel-Atlas* for the contours of such independent action; and advised her that she had a right to appeal this ruling. (Pages 16 and 17 of transcript of hearing, May 21, 1981.) In an order denying a motion for reconsideration, he reiterated this position: "While the court denied the motion, it did so without reflection on the merits of plaintiff's claims. . . . The narrow ground for the ruling was that the remedy available, if any, was by the independent action under the doctrine of *Hazel-Atlas*." (Order, July 1, 1981.)

The ruling, was, however, in error, for, as research showed, *Hazel-Atlas* calls for an ancillary proceeding. Petitioner did appeal and the question presented for review was: "WHETHER THE DOCTRINE OF HAZEL-ATLAS, DEALING WITH FRAUD UPON THE COURT, CALLS FOR A MOTION PROCEDURE OR AN INDEPENDENT ACTION."

But the D.C. Court of Appeals, rather than rule on the issue, now pretends, in conformance with its pretense that petitioner did not charge "fraud upon the court," that no such error was made or appealed.

SECOND PARAGRAPH

3. *In 1977, appellant filed suit against appellee, Dr. John E. Nardini alleging medical malpractice involving treatments received by her while a patient at the Psychiatric Institute.[1] Appellant's specific complaint was that she was administered electric shock treatments without being fully informed of possible adverse effects. On January 7, 1977, a jury returned a verdict for appellee upon which judgment was entered.*

Footnote 1. Appellant's original complaint named the Psychiatric Institute as a codefendant. During the trial, a motion for a directed verdict was granted, thereby dismissing Psychiatric Institute from the suit.

This history is largely correct. Actually suit was filed in 1974, the Psychiatric Institute was brought in by amendment, and her specific complaint was considerably more specific than is said here.

4. *More than four years later, appellant filed in February 1981, a motion to set aside the judgment for fraud upon the court, claiming that six of the medical records introduced into evidence at the 1977 trial were fraudulent.*

This is the only passage in the Memorandum where the phrase "fraud upon the court" appears. Note that it is dropped casually as if it were from petitioner's own idiosyncratic language rather than from the language of Rule 60(b), where it designates the highest degree of courtroom fraud.

The import of the phrase is further undercut by a vague understatement of petitioner's charges.

What petitioner actually claimed in her motion (Exhibit B) was: "that *virtually all of the medical and dental records concerning herself* which were read or displayed at trial were *forged or otherwise false.*" (The number six is correctly taken from the itemization of these records in the affidavit accompanying the motion.)

5. *According to appellant, this fraud was perpetrated by appellee with the knowledge and cooperation of appellant's trial counsel.*

This seems to omit defense counsel as participants in the fraud, whereas petitioner's motion does not. In any event, petitioner's own emphasis was different. As stated in her Appellant's Reply Brief, where she discussed the apportionment of responsibility among the accused attorneys: "Plaintiff's attorneys . . . concealed defendants' attempted fraud and brought it to successful fruition for reasons of their own. Thus it was plaintiff's attorneys who played the crucial role in the fraud upon the court." (Exhibit C, page 12a.)

6. *Appellant sought relief pursuant to Super. Ct. Civ. R. 60(b)(6).* [2]

See comments under item 1 above.

7. *Footnote 2. In relevant part, Rule 60(b) provides:*

> *On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: . . .(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; . . . (6) any other reason justifying relief from the operation of the judgment.*

Here are correctly quoted the two numbered clauses of Rule 60(b) whose fraud coverage is discussed under item 1 above.

For perspective it needs to be borne in mind that Rule 60(b) covers all possible grounds for relief from a judgment, not just fraud. Clauses 1 through 5 deal with "common situations easily envisaged" and clause 6 with "the extraordinary, novel, or unusual situation." (MOORE'S FEDERAL PRACTICE, Vol. 7, page 904.)

THIRD PARAGRAPH

8. *Clause (6) of rule 60(b) permits the court to relieve a party from final judgment for "any other reason justifying relief" providing only that the motion be filed within "a reasonable time."*

The quotation is correct. A novel situation could be trivial or momentous, and a reasonable time could be short or long in the light of all the circumstances. (If petitioner were relying on clause 6, the circumstances preventing earlier filing would have needed to be addressed by the lower court.)

9. *Clause (3), which specifically redresses fraud, also requires filing within "a reasonable time," but under no circumstances later than one year after the judgment complained of is entered.*

This statement implies that clause 3, and nothing else, redresses fraud. That is incorrect.

What clause 3 specifically redresses is misconduct of an adverse party—including fraud but also including lesser types of misconduct, such as misrepresentation. It does not redress misconduct of anyone *but* an adverse party. Time limit: One year.

Fraud on the part of a third party, such as an independently acting witness or jury member or a litigant's own counsel, is redressed by clause 6. So would be a mixed situation. Time limit: A reasonable time.

In addition, fraud of such extreme degree that it defiles the court itself, can be redressed under the "fraud upon the court" provision, regardless of who was involved and regardless of when the matter comes to the attention of the court.

In the context of pure adversary fraud, Moore puts this last proposition this way: "Clause (3) does not . . . limit the power of a court 'to set aside a judgment for fraud upon the court' and there is no time limitation upon this power." (MOORE'S FEDERAL PRACTICE, Vol. 6A, page 4028.)

10. *Appellee contends that although the motion cites 60(b)(6) as a basis of relief, appellant's complaint was of fraud coming within 60(b)(3). We agree.*

Here the Court pretends that some sort of issue about clauses had been presented for review, though there was no such issue.

In positive terms, it holds that a complaint of fraud by all the attorneys in a case, with the complainant's own counsel playing the crucial role, comes under clause 3.

FOURTH PARAGRAPH

11. *To justify relief under Super. Ct. Civ. R. 60(b)(6), there must be some compelling reason not covered by the other clauses of the rule. Day v. United Securities Company, D.C. App., 272 A2d 448, 451 (1970).*

The cited case illustrates the principle that clause 6 covers grounds not covered by the other clauses.

In this case the purchaser of an automobile sought to have a default judgment set aside under Rule 60(b)(6) on grounds that his 15-year-old son, with whom the complaint and summons had been left, had neglected to turn them over to him. The Court ruled that this was not an "exceptional or extraordinary situation" but was, at best, excusable neglect, which is one of the grounds for relief under clause 1.

12. *Here, appellant's claim involved the type of fraud encompassed by Clause (3) and should have been filed within the one-year period prescribed.*

In item 9 above, and possibly item 10, the Court implied that clause 3 alone redresses fraud. Now it speaks of "the type of fraud encompassed by Clause (3)," admitting that clause 6 also redresses fraud.

However, it insists that a claim of fraud on the part of all the attorneys in a case, with the claimant's own counsel playing the crucial role, comes under clause 3. The implication is that this is

not an exceptional situation in the District of Columbia court system. We are left to wonder what type of fraud would come under clause 6 in this jurisdiction.

13. *Clearly, Clause (6) was not intended to relieve a litigant from the time requirement of Clause (3). See Harris v. Harris, D.C. App., 304 A2d 635, 636 (1973).*

Clearly.

However, the cited case does not deal with the time limits of clause 3 versus clause 6. It deals with an appeal versus clause 6. Also it has nothing to do with fraud.

In this case a wife who had received an adverse judgment in a divorce proceeding and who had not appealed within the time prescribed, later attempted to obtain a reversal via clause 6 of Rule 60(b). She was advised that the Rule can't be used to extend the time limit for an appeal.

14. *Moreover, appellant knew of the alleged fraud in 1977, but waited four years before seeking relief.*

It is literally true that four years elapsed between the judgment and the motion for relief.

However, by alluding to this interval three times (see also items 1 and 4 above) and by the loaded language "waited four years before seeking relief," the Court seeks to convey a picture of long indifference followed by sudden caprice—a picture it knows to be false. It knows from petitioner's affidavit that her efforts to set matters right were unceasing over those four years and it also knows of the effort she made through its own subsidiary agency the D.C. Board on Professional Responsibility.

In actuality, petitioner's quest for relief has been as massive as the fraud itself.

In her complaint to the Board, made in 1978 (herewith, as Exhibit A), it may be noted that she sent information copies to a large number of persons and organizations. Many of these

(and many others) petitioner also complained to directly concerning specific elements or facets of the fraud, either before or after her complaint to the Board. And in 1980 her campaign to nullify this fraud was reported in published form under the title "The Medico-Legal Adventures of Marilyn Rice: Selected Letters and Papers" (APAPA, Box 9, Bayside, New York, N.Y. 11361, $4.00).

Petitioner did not "wait" four years before seeking relief under Rule 60(b). It was four years before she heard of Rule 60(b).

15. *Rule 60(b) is not intended to be a substitute for an appeal that has been foregone. Leeks v. Leeks, D.C. App., 316 A2d 859, 860 (1974).*

It is certainly true, as has already been illustrated in the divorce case above, that Rule 60(b) is not intended to give relief on a ground that was open to the movant by appeal. This second illustration concerns a squabble over real estate between a decedent's father and widow. The widow lost, neglected to appeal, and subsequently sought relief under Rule 60(b), apparently under clause 4. Relief was denied, inasmuch as she could have appealed.

But the converse is also true. "An appeal may not be taken as a substitute for a motion under Rule 60(b)" (MOORE'S FEDERAL PRACTICE, Vol. 7, page 424).

These appeals court judges know that a judgment based on fraud is not appealable. Judicial error is appealable but fraud is grounds for a motion under Rule 60(b). Yet they labor and labor the pretense that petitioner should have presented her allegations by appeal, even pretending to cite cases to prove the point. In this more loudly than in anything else, they demonstrate the character of this document.

16. *In such a case, possible prejudice to the non-moving party militates strongly in favor of finality.*

The proposition is: Fraud is not appealed, should be concealed.

FIFTH PARAGRAPH

17. *Since the motion was not filed within the time prescribed by Clause (3), the trial court properly denied appellant the relief sought. Accordingly, it is—ORDERED and ADJUDGED that the judgment of the trial court be, and hereby is, affirmed.*

It may be recalled that the question on appeal was as to the proper procedure for complaining of "fraud upon the court" perpetrated by five officers of the court.

The appeals court holds that, under Rule 60(b), such fraud may not be complained of by any procedure after one year, regardless of circumstances, and pretends that this was the stance of the trial court.

Exhibit E

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 81-996

MARILYN RICE,
Plaintiff-Appellant,

v.

JOHN E. NARDINI, *et al.*,
Defendants-Appellees.

REC'D Apr 19 1982

MOTION FOR A RULING ON THE ISSUE PRESENTED FOR REVIEW

Reference is to appellant's appeal from denial of a "Motion to Set Aside Jury Verdict for Fraud Upon the Court"; and to the Court of Appeals' "Memorandum Opinion and Judgment" issued April 8, 1982.

Said opinion and judgment affirmed the denial without recognition of the lower court's grounds for denial and without reference to the issue presented for review.

Appellant hereby moves the Appeals Court to rule on the issue presented for review or to communicate to appellant its reasons for not ruling.

Attached is a memorandum in support of this motion.

/s/ Marilyn Rice

MARILYN RICE (pro se)
2106 S. 5th Street (Apt 1)
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(979-5398)

Note: Supporting memorandum is not included here because it covers the same ground that is covered elsewhere in this petition.

Exhibit F

DISTRICT OF COLUMBIA COURT OF APPEALS
500 Indiana Avenue, N.W.
Washington, D.C. 20001
(202) 638-7113

No. 81-996

MARILYN RICE,

Appellant,

v.

JOHN E. NARDINI, *et al.*,

Appellees.

BEFORE: Mack and Pryor, Associate Judges; and Pair, Associate Judge, Retired.

FILED May 5 1982

ORDER

On consideration of appellant's pro se "motion for a ruling on the issue presented for review," it is

ORDERED that the aforesaid motion is denied.

PER CURIAM